

## MITSUBISHI SOUTH QUARRY EXPANSION CARBONATE PLANT MITIGATION PROPOSAL

Mitsubishi Cement Corporation (“MCC”) is proposing to develop a new limestone mining operation upon approximately 153.6 acres, including 147 acres of unpatented mining claims under the jurisdiction of the United States Forest Service (“USFS”). 6.6 acres of the haul road will traverse property owned by MCC, and subject to that conservation easement in favor of the County of San Bernardino, dated October 12, 1999. The project site is located within portions of Sections 14, 15, 22 and 23 of Township 3N, Range 1E, San Bernardino Base and Meridian, and is within the geographic habitat range of several carbonate endemic plant species that have been listed as threatened or endangered pursuant to the Federal Endangered Species Act (“ESA”). The listed plant species include Cushenbury buckwheat (*Errogonum ovalifolium* var. *vineum*), Cushenbury milk vetch (*Astragalus albens*), Cushenbury oxytheca (*Oxytheca parishii* var. *goodmaniana*) and Parish’s daisy (*Erigeron parishii*).

Field surveys conducted in 2010, on the project site and proposed haul road alignment indicate development of the proposed project will result in impacts to three of the four carbonate plant species and adverse modification of critical habitat designated for the species. Based on the 2010 Field Surveys, as well as previously mapped plant occurrences, the project will impact 32.6 acres of Cushenbury buckwheat and 94 acres of critical habitat, 24.3 acres of Cushenbury oxytheca and 28.5 acres of critical habitat, and .6 acres of Parish’s daisy and 19 acres of critical habitat. The project site has a total Conservation Value of 93.75, calculated pursuant to the Carbonate Habitat Management Strategy (CHMS). MCC proposes to mitigate the project’s impacts to the carbonate plant species by, among other things, providing conservation of lands supporting the plant species, consistent with the terms of the CHMS. This mitigation proposal is a Permanent Contribution, as the term is defined in the CHMS. (CHMS, § 10(b)(i))

The CHMS is a collaborative strategy to address the preservation of the carbonate plant species, while providing a method for mining projects to obtain Federal ESA compliance, that was approved in April of 2003. The CHMS proposes multiple methods of permanent habitat conservation, which include federal land use designations, federal purchases of private property, land exchanges, relinquishment of unpatented mining claims and/or execution of a conservation easement or surface use restrictions, coupled with a mineral withdrawal. (CHMS, § 10(b)(iii)) The CHMS assigns Conservation Value to each parcel of property or mining claim depending upon plant value. To adequately mitigate a project’s impacts, mitigation lands had to be permanently conserved at a Compensation ratio of 3:1. The Compensation ratio is measured in terms of Conservation Value.

In 2005, the USFWS issued a Programmatic Biological Opinion for the CHMS concluding that compliance with the terms of the CHMS would not result in jeopardy to continued existence of the listed plant species. The 2005 Biological Opinion concluded that compliance with the CHMS should be sufficient to obtain a no jeopardy opinion and support issuance of an Incidental Take Statement. The Biological Opinion classified the habitat located on unpatented mining claims as vulnerable to loss or degradation and therefore acknowledged that preservation of such habitat, pursuant to the CHMS, will promote the recovery of the species. On April 29, 2003, the USFS, BLM, County of San Bernardino, and mining stakeholders, including MCC, executed a Memorandum of Understanding, whereby all parties agreed to implement the terms of the CHMS in regard to future mining proposals. Additionally, the USFS incorporated the CHMS into its Land Management Plan.

MCC proposes to convey conservation easements or other surface use restrictions burdening unpatented mining claims known as Cushenbury 15 and Cushenbury 16a and the fee property generally referred to as Cushenbury 7P. MCC also proposes to utilize the conservation easements to compensate for impacts to carbonate plant species within the existing conservation easement. Cushenbury 15 and 16a are 160-acre association placer mining claims located within Sections 18 and 19 of Township 3N, Range 2E. Cushenbury 7P is an approximately 117 acre parcel, APN #0447-010-04, located in the southeast quarter of Section 14, Township 2N, Range 1E. The proposed mitigation lands are depicted in Exhibit "A" hereto. Each of the properties contain significant values for both Cushenbury oxytheca, Cushenbury buckwheat, and Parish's daisy, as well as critical habitat designated for these species.

Based upon the historical survey data collected prior to 2010, Cushenbury 15 has a CHMS Conservation Value of 94, Cushenbury 16a possesses a CHMS Conservation Value of 88, and Cushenbury 7P has a Conservation Value of 65, for a combined Conservation Value of 247. Based on these historical plant values, this mitigation proposal results in a mitigation ratio of 2.63 to 1.00. Although the proposal falls just shy of the 3:1 compensation ratio required by the CHMS, there are several factors which enhance the mitigation value of these specific mitigation parcels. Initially, all three properties are identified in the CHMS as being within the Furnace Unit Stage One Priority Area. Stage One Priority Areas contain the richest, most valuable carbonate plant habitat. The preservation of this habitat is essential for conserving large contiguous blocks of high quality habitat to assist in the continued existence and recovery of the species. In essence, the Stage One Priority Areas are some of the most important lands needed for conservation. In fact, the conservation of Stage One Priority Areas is so important that the CHMS provides incentives for contributing lands within Priority Areas to the Habitat Reserve. The applicable Resource Management Agency, here the USFS, may assign a minimum Conservation Value of 1.00 cu/acre to any portion of land within the Priority Area that is contributed as mitigation lands. (CHMS, § 9(b)(iii)) Although the CHMS makes such minimum value assignments within the discretion of the Resource Management Agency, the agency must make such minimum

value assignments as to any land that is determined to be necessary to meet the terms of the CHMS (preservation of 100% of occupied and 85% of suitable habitat within the Stage One Priority Areas). (CHMS, § 9(b)(iii)) Application of this provision of the CHMS would result in the mitigation lands identified in MCC's proposal being assigned a CHMS Conservation Value of possibly as much as 437/cu, which results in a compensation ratio of 4.60 to 1.00.

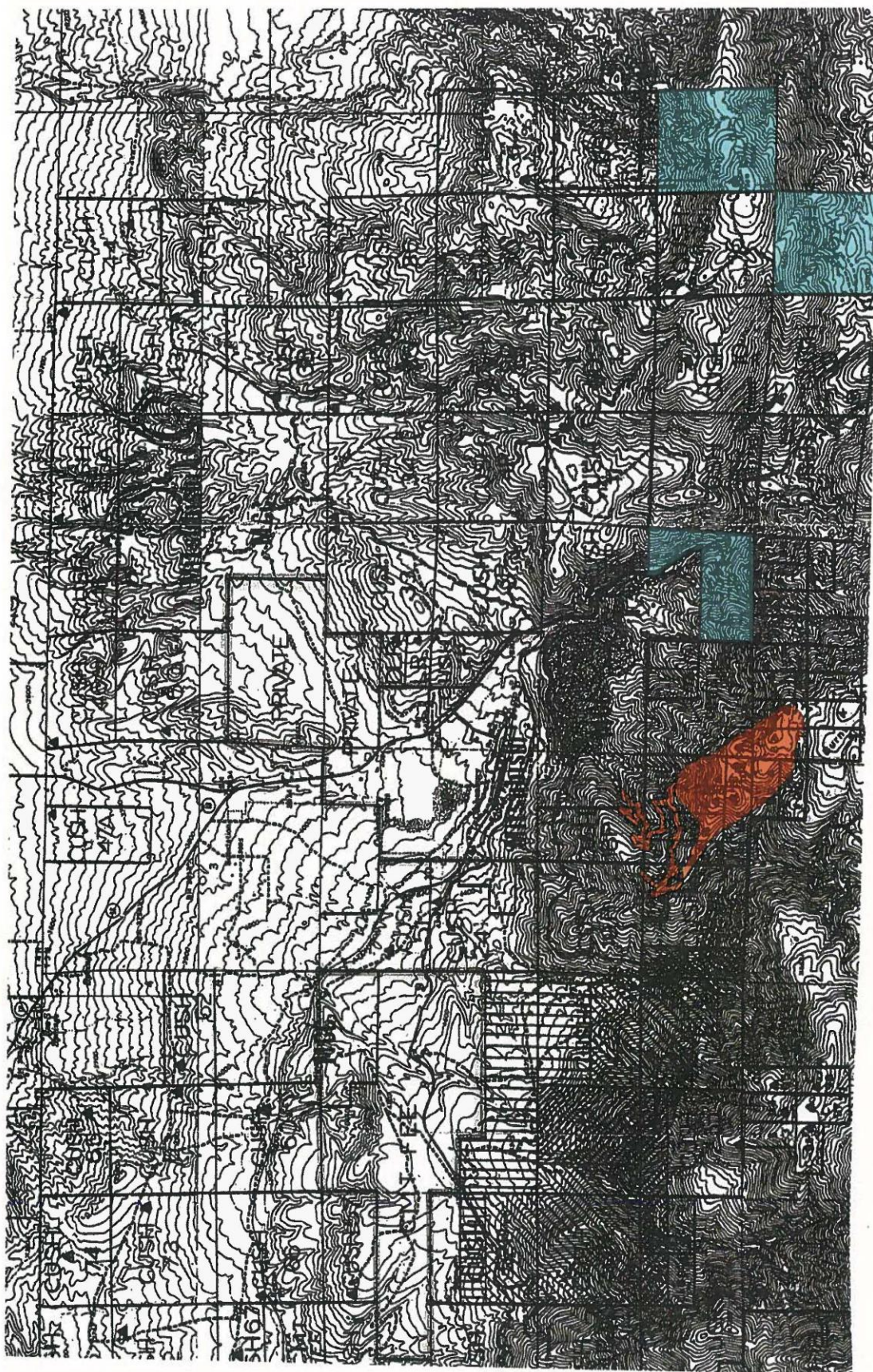
Additionally, the mitigation value of the proposed mitigation parcels is potentially higher than reflected in existing survey data. Field surveys of the proposed project site and haul road conducted in 2010, reflected a measureable increase in plant density compared to historical data. This increase is likely attributable to a number of factors, including weather conditions and rainfall amounts experienced during the 2009-2010 winter. The same factors that lead to the increased plant densities on the project site likely resulted in a corresponding increase in carbonate plant density and Conservation Values on the proposed mitigation lands, not reflected in the existing data discussed above.

Cushenbury 7P is currently subject to a Conservation Easement in favor of the County of San Bernardino. The Conservation Easement is required as a condition of the County's approval of Mining/Reclamation Plan 84M-016 in 2004, as mitigation for the West Pit project's impacts to the Nelson's Big Horn Sheep. By its terms, the Conservation Easement is not mitigation for impacts to the carbonate plant species. Although Cushenbury 7P is currently burdened by the existing Conservation Easement, the Conservation Easement does not provide sufficient protection for the carbonate plant species. Incremental, definitive protection for carbonate plant species will be realized through creation of additional surface use restriction precluding activity that could adversely impact carbonate plant species and their critical habitat.

As mentioned previously, Cushenbury 7P is within the CHMS Furnace Unit Stage 1 Priority Area. Preservation of Stage 1 Priority Areas is crucial to the continued existence and recovery of carbonate plant species and, in fact, pursuant to the CHMS, no "take" of carbonate plants may occur under the terms of the CHMS until all Stage 1 Priority Areas are preserved. Therefore, it is important that the carbonate plant species and habitat encompassed by Cushenbury 7P be fully protected. There is currently no federal protection of plant species listed as threatened or endangered under the ESA that occur on privately-owned land. Actions could be taken that adversely impact the carbonate plant species that are not necessarily contrary to the terms of the existing conservation easement. Accordingly, the carbonate plants and accompanying habitat will gain significant additional protection through an additional conservation easement. The current Conservation Easement Deed created as Big Horn Sheep mitigation, does not formally preserve the carbonate plant species and critical habitat present within Cushenbury 7P. Although the Conservation Easement may provide a modicum of incidental protection for the carbonate plant species due to restrictions on surface use that would impact Bighorn sheep, by its terms it may be relocated thereby exposing the

carbonate plants and removing any incidental benefits the Conservation Easement Deed provided. If Cushenbury 7P is preserved in perpetuity through specific surface use restriction in favor of the USFS and made a part of the Habitat Reserve, relocation of the Conservation Easement will not impact the permanence of the carbonate plant protection.





**EXHIBIT "A"**